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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,858

10/20/2005

Doris Reich

3456

1047

278

7590

09/22/2009

MICHAEL J. STRIKER  
103 EAST NECK ROAD  
HUNTINGTON, NY 11743

EXAMINER

RACHUBA, MAURINA T

ART UNIT

PAPER NUMBER

3727

NOTIFICATION DATE

DELIVERY MODE

09/22/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,858	<b>Applicant(s)</b> REICH ET AL.	
	<b>Examiner</b> Maurina Rachuba	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-17 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-17 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07 July 2009 has been entered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krasznai et al, 5,065,473 (listed in the Notice of References Cited mailed 23 July 2007) in view of Lenkiewicz et al, 2005/0050672, as set forth in the Office action mailed 11 July 2007. Further, regarding the newly added limitation “a **substantially rectangular** viewing window located in a container and having **four straight edges including** at least two **straight** edges extending substantially perpendicular to one another”, ‘473 teaches that window **26** is rectangular, and therefor has at least two edges extending substantially perpendicular to one another and that the window has

four straight edges, see figure 3. Regarding newly added claim 21, '473 discloses a viewing window arranged in a container wall so that the straight edges of the window are inwardly spaced from sides of the wall. As set forth in the Office action mailed 11 July 2007, '672 teaches a similar container, having a window and fill marks, each of the marks is spaced inwardly of the window from one of the perpendicular straight edges to form a space there between, at least some of the letters located in the spaces. Note that the letters "FULL" are located in a space between the upper perpendicular edge and the line. The letters "FILL LINE" are not located in the space. It is the examiner's opinion that such positioning of the letters between the line and an edge of the window would be a matter of aesthetics to one of ordinary skill in the art, and without a showing of unexpected results, would be obvious.

#### ***Response to Arguments***

4. Applicant's arguments filed 07 July 2009 have been fully considered but they are not persuasive. Applicant argues that the combination of references used to reject the claims does not teach the claimed fill lines, their shape or position, and that one of ordinary skill would not consider the claims obvious over the references. The examiner disagrees. Applicant has claimed as his invention the shape of the window, the shape of the fill lines, and the lettering designating the fill lines. There is no showing that the shapes claimed or the lettering has any unexpected result over that taught by Lenkiewicz. Applicant's argument that it is not obvious to combine the rectangular window of Kraznai with the fully transparent wall of Leniewicz is not supported by evidence. Kraznai clearly teaches that it is old and well to form a rectangular window

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with the claimed configuration in a hand tool as broadly claimed. Lenkiewicz clearly teaches that it is old and well known to provide markings in a window to indicate fill levels. One of ordinary skill in the art would have considered it obvious to have provided the window of Kraznai with the markings of Lenkiewicz, for the predictable result of indicating when the container is full. Again, applicant has not provided any evidence that the shape of the markings as claimed have unexpected results not taught by Lenkiewicz.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurina Rachuba whose telephone number is 571 272 4493. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571 272 4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Rachuba/  
Primary Examiner, Art Unit 3727